(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

WRIT PETITION NO. 2654 OF 2005

BETWEEN

Dev Prasad S/o Late Bhikam Prasad Mishra, aged about 55 years, resident of Village Sirgitti, Tahsil and District Bilaspur (CG).

2654/05
2799/05
Sameer Singh
P.R. No.....
Presented by Shri.....
dated 22/6/05

PETITIONER

AND

1. The Board of Revenue, Chhattisgarh, Bilaspur, Through its President, Board of Revenue, Chhattisgarh, Bilaspur, Tahsil and District Bilaspur (CG).
2. Collector, Bilaspur, Tahsil and District Bilaspur (CG).
3. Sub Divisional Officer (Revenue), Bilaspur, Tahsil and District Bilaspur (CG).
4. Tahsildar, Bilaspur, Tahsil and District Bilaspur (CG).
5. Gajanand Awasthi S/o Ramkhilawan Awasthy, resident of Village Sirgitti, Tahsil and District Bilaspur (CG).

RESPONDENTS

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT OR WRITS, ORDER OR ORDERS, DIRECTION OR DIRECTIONS UNDER THE FACTS AND CIRCUMSTANCES OF THE CASE

(72)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ...W.P...2654/सन् **2005**

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

11-07-2005

Smt. Renu Kochar, counsel for the petitioner.

Shri Parag Kotecha, Panel Lawyer for the Respondents / State.

Heard on admission.

The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India questioning the order of Tahsildar, Bilaspur dated 03-12-2001, order of Sub Divisional Officer, Bilaspur dated 20-05-2003 and also order dated 21-01-2004 passed by the Board of Revenue, Chhattisgarh.

The case of the petitioner is that on 02-10-1948 elder brother of petitioner's father namely Ayodhya Prasad purchased a land area 0.07 acre situated in Khasara No. 511/01, Mouja Sirgitti, Patwari Halka No.23, R.I. Circle, Bilaspur from the then Malgujar namely Ramlal on a sale consideration of Rs. 85/- and the sale deed was executed on a stamp of Rs. 1/-. However, the said land has been shown in the revenue record as grass land in the name of Devi Prasad, who was the then Malgujar. According to Khasara No.P-1 total area of Khasara No.511/01 was 2.18 acres and the then Malgujar Ramlal during his life time sold 54 dismil of land to various other persons including Ayodhya Prasad as well as Sahasram who purchased 9 dismil land. The land could not be mutated in the name of said Ayodhya Prasad and he died in the year 1976. Even after the death of Ayodhya Prasad his legal heirs also could not be mutated in their names. Thereafter the petitioner herein purchased the said land in the year 1984 from the legal heirs of said Ayodhya Prasad in

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

consideration of Rs. 1,000/-, and he also could not be mutated in his name.

Respondent No. 5 made a complaint to the Tehsildar against the petitioner that he has encroached upon the government grass land and constructed a house, upon which a Case No.2/A13/2000-2001 was registered between Onkar Prasad Vs. Dev Prasad. However, the said case has been dismissed for want of prosecution, therefore, the elder brother of respondent No.5 again made a complaint before the Tehsildar and in that complaint case the Tehsildar passed the order of dispossession of the petitioner and imposed fine of Rs.400/-. The petitioner in view of order of Tahsildar deposited the fine amount on 03-12-2001. The petitioner challenged the impugned order before the Sub Divisional Officer, Bilaspur by way of preferring an appeal, but the same was dismissed. Being aggrieved by the order of Sub Divisional Officer the petitioner filed an appeal before the Board of Revenue and Board of Revenue without appreciating the material facts available dimissed the appeal.

I have perused the order of Sub Divisional Officer, Bilaspur dated 20.5.2003.

Perusal of order shows that after hearing counsel for the petitioner herein the Sub Divisional Officer perused the record of court below and on the basis of special enquiry report reached to the conclusion that the petitioner and complainant i.e. respondent No.5 both have encroached upon the government land bearing Khasra No.511/1A and further observed that the court below passed the order against the petitioner after giving him sufficient opportunity of

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मामला क्रमांक WP 2654 **सन्** 2005

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

hearing as well as also to lead evidence. Against that order the petitioner approached the Board of Revenue, who has also affirmed the said order.

During the course of arguments learned counsel for the petitioner submitted that the petitioner has already filed a civil suit in the court of learned Civil Judge for grant of permanent injunction in which State Government is also a party.

In the first instance, the petitioner has already approached the civil court and secondly, there is concurrent finding of the SDO (Revenue) & Board of Revenue that the petitioner has encroached upon the government land, whereas the petitioner is claiming the said land to be of his own. In view of the fact that disputed facts are involved in this case, which cannot be enquired into the writ jurisdiction, therefore, the petitioner is directed to avail appropriate remedy available to him under the law.

In view of the above, the petition stands dismissed.

Consequently, M.(W.)P. No.2184/05 & I.A. No.5283/05 also stand disposed of.

Sd/-
L.C.Bhadoo
Judge

Roshan

(पीछे देखिये)